

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANDREW SNITZER and PAUL LIVANT, individually and as representatives of a class of similarly situated persons, on behalf of the American Federation of Musicians and Employers' Pension Plan,

Plaintiffs,

v.

THE BOARD OF TRUSTEES OF THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND, THE INVESTMENT COMMITTEE OF THE BOARD OF TRUSTEES OF THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND, RAYMOND M. HAIR, JR., AUGUSTINO GAGLIARDI, GARY MATTS, WILLIAM MORIARTY, BRIAN F. ROOD, LAURA ROSS, VINCE TROMBETTA, PHILLIP E. YAO, CHRISTOPHER J.G. BROCKMEYER, MICHAEL DEMARTINI, ELLIOT H. GREENE, ROBERT W. JOHNSON, ALAN H. RAPHAEL, JEFFREY RUTHIZER, BILL THOMAS, JOANN KESSLER, MARION PRESTON,

Defendants.

VALERIE CAPRONI, United States District Judge:

WHEREAS putative class member Martin Stoner has informed the Court of a set of email communications that appears to have been inadvertently sent to Mr. Stoner by Plaintiffs' counsel (attached as Exhibit 1);

WHEREAS the communications appear to show Plaintiff's counsel performing a search for documents containing references to Mr. Stoner and other potential class members;

IT IS HEREBY ORDERED that Plaintiff's counsel must file a response no later than **July 7, 2020**, addressing the purpose of the searches, its relevance to counsel's representation of the class, and Mr. Stoner's concern that counsel is engaged in "opposition research" adverse to

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: \_\_\_\_\_  
DATE FILED: 07/06/2020

No. 1:17-cv-5361 (VEC)

**SEALED ORDER**

class members' interests. To the extent that Plaintiff's counsel seeks to file the response under seal, counsel must follow the undersigned's Individual Practices concerning sealing and also provide a copy to Mr. Stoner via email.

IT IS FURTHER ORDERED that Plaintiff's counsel must explain whether Plaintiffs are asserting privilege over the disclosed emails, and if so, why class members should not have access to the emails and why any privilege has not been waived by the disclosure.

The Clerk of Court is respectfully directed to restrict the viewing level for this Order and make it accessible only to the parties. The docket text for the entry should read "ORDER: Plaintiff's counsel must file a response no later than July 7, 2020, addressing inadvertently disclosed emails."

**SO ORDERED.**

Date: July 6, 2020  
New York, New York

  
\_\_\_\_\_  
**VALERIE CAPRONI**  
United States District Judge

**Exhibit 1****Fw: AFM**

martin stoner &lt;jilmar\_10025@yahoo.com&gt;

Thu 7/2/2020 9:39 PM

**To:** Caproni NYSD chambers**Cc:** Steven A. Schwartz <steveschwartz@chimicles.com>; Robert J. Kriner <rjk@chimicles.com>; Myron Rumeld <mrumeld@proskauer.com>; Jani K. Rachelson <jrachelson@cwsny.com>

Dear Judge Caproni,

I am sorry to bother you again and apologize profusely for this communication, but I received a very strange email from Snitzer Class Steven Schwartz tonight in which it appears that he is doing opposition research into members of the class including myself-the class that he is supposed to represent. I believe that this is more evidence that class counsel is not adequately representing class members, and I intend to file a complaint against all the lawyers involved in this email for Unprofessional Conduct. Since I am not a lawyer and cannot pretend to understand internal legal communications, perhaps you can ask class counsel what the hell he thinks he is doing behind my back and the back of many other class members who have opposed this settlement? Shame on him!

Respectfully,

Martin Stoner

----- Forwarded Message -----

**From:** Steven A. Schwartz <steveschwartz@chimicles.com>**To:** Dave W. Birch <dwb@chimicles.com>**Cc:** Mark B. DeSanto <mbd@chimicles.com>; martin stoner <jilmar\_10025@yahoo.com>**Sent:** Thursday, July 2, 2020, 8:22:46 PM EDT**Subject:** Re: AFM

Mark - also do a run for martin stoner, his email is

jilmar\_10025@yahoo.com

**Steven A. Schwartz**

Partner

361 West Lancaster Avenue  
Haverford, PA 19041  
(610) 645-4720 (direct dial)  
(610) 649-3633 (telecopy)

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On Jul 2, 2020, at 8:08 PM, Dave W. Birch &lt;DWB@chimicles.com&gt; wrote:

Steve

Mail CaproniNYSD chambers - Outlook  
Everything is ready for you now. Anything else I can do to help?

-Dave

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**From:** Dave W. Birch  
**Sent:** Thursday, July 2, 2020 7:27 PM  
**To:** Steven A. Schwartz <[steveschwartz@chimicles.com](mailto:steveschwartz@chimicles.com)>  
**Cc:** Mark B. DeSanto <[mbd@chimicles.com](mailto:mbd@chimicles.com)>  
**Subject:** RE: AFM

Chris Deschene's docs are ready

The last Snitzer pdf about 50% complete.

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**From:** Dave W. Birch  
**Sent:** Thursday, July 2, 2020 6:50 PM  
**To:** Steven A. Schwartz <[steveschwartz@chimicles.com](mailto:steveschwartz@chimicles.com)>  
**Cc:** Mark B. DeSanto <[mbd@chimicles.com](mailto:mbd@chimicles.com)>  
**Subject:** RE: AFM

Steve,

I'm still working on the plaintiffs documents and Chris Deschene's docs but all the other documents exported from the defendants database are organized by custodian here: J:\AFM\SAS to Review

The plaintiffs productions that are ready to search now are here: J:\AFM\PDF Productions\OCR'd

Picking up dinner now and I'll finish as soon as I get back.

-Dave

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**From:** Steven A. Schwartz <[steveschwartz@chimicles.com](mailto:steveschwartz@chimicles.com)>  
**Sent:** Thursday, July 2, 2020 6:05 PM  
**To:** Dave W. Birch <[DWB@chimicles.com](mailto:DWB@chimicles.com)>  
**Cc:** Mark B. DeSanto <[mbd@chimicles.com](mailto:mbd@chimicles.com)>  
**Subject:** Re: AFM

Yes that's a nice small set for me to review.

**Steven A. Schwartz**  
Partner

361 West Lancaster Avenue  
Haverford, PA 19041  
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On Jul 2, 2020, at 5:57 PM, Dave W. Birch <[DWB@chimicles.com](mailto:DWB@chimicles.com)> wrote:

Steve / Mark

While I'm processing the Plaintiffs productions to be searchable I ran searches against our defendants productions for the terms below:

AFM Database (DEF)	# Documents
Chris Deschene	75
Steve Nathan	12
Robbie Buchanan	0
John Mark Casstevens	0
Armen Donelian	46
Marilyn Coyne	2
Larry Franklin	0

Jody Jarowey	20
<a href="mailto:christopher.deschene@gmail.com">christopher.deschene@gmail.com</a>	79
<a href="mailto:steve@stevenathanmusic.com">steve@stevenathanmusic.com</a>	0
<a href="mailto:robbiebuchanan@mac.com">robbiebuchanan@mac.com</a>	0
<a href="mailto:mcass@comcast.net">mcass@comcast.net</a>	0
<a href="mailto:armen.donelian@gmail.com">armen.donelian@gmail.com</a>	21
<a href="mailto:cenovia4@gmail.com">cenovia4@gmail.com</a>	0
<a href="mailto:larryfranklin@comcast.net">larryfranklin@comcast.net</a>	0

Would you like me to export the documents with hits to pdf for review?

**From:** Mark B. DeSanto <[mbd@chimicles.com](mailto:mbd@chimicles.com)>  
**Sent:** Thursday, July 2, 2020 5:43 PM  
**To:** Steven A. Schwartz <[steveschwartz@chimicles.com](mailto:steveschwartz@chimicles.com)>  
**Cc:** Dave W. Birch <[DWB@chimicles.com](mailto:DWB@chimicles.com)>  
**Subject:** Re: AFM

I just touched base with Dave, and we are on it. We'll let you know when everything is pulled and saved.

**Mark B. DeSanto**

Associate

Office: 610-642-8500 x316

Fax: 610-649-3633

Email: [MBD@chimicles.com](mailto:MBD@chimicles.com)

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On Jul 2, 2020, at 5:20 PM, Steven A. Schwartz <[steveschwartz@chimicles.com](mailto:steveschwartz@chimicles.com)> wrote:

Mark - Can you do a quick search to see if we have any documents in our database from the guys listed below – names & emails provided. Would like to see docs they wrote.

Dave – I see in the J/AFM/ under PDF productions & FTP upload we have the Snitzer & Livant productions we made to defendants. But they are PDF and not searchable. You may have converted & sent via FTP to defendants I'd like to be able to search their productions to pluck our docs authored by the guys listed below. Can you make them searchable without it being a massive time suck— would save me time if possible. Thanks.

### **Chris Deschene**

**Chris Deschene <[christopher.deschene@gmail.com](mailto:christopher.deschene@gmail.com)>**

Steve Nathan

Steve Nathan [steve@stevenathanmusic.com](mailto:steve@stevenathanmusic.com)

Robbie Buchanan, John Mark Casstevens, Armen Donelian, Marilyn Coyne, Larry Franklin & Jody Jarowey

Robbie Buchanan [robbiebuchanan@mac.com](mailto:robbiebuchanan@mac.com)

Mark Casstevens [mcass@comcast.net](mailto:mcass@comcast.net)

[armen.donelian@gmail.com](mailto:armen.donelian@gmail.com)

marilyn coyne [cenovia4@gmail.com](mailto:cenovia4@gmail.com)

[larryfranklin@comcast.net](mailto:larryfranklin@comcast.net)

### **Steven A. Schwartz**

Partner



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